IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2006

CORAM:

THE HONOURABLE MR. JUSTICE P.K. MISRA

and

THE HONOURABLE MR. JUSTICE R. SUDHAKAR

Writ Petition No.14737 of 2001

1. K.Velayudham
2. E.Mathuranayagam
3. T.Balasubramanian
4. V.Nallasivam
5. Nellai Nayagam
6. K.S.Murugan .. Petitioners

Vs.

The I Additional District Judge-cum-
Chief Judicial Magistrate,
Tirunelveli. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the proceedings of the respondent dated 30.7.2001 made in A1.81/2001 (served on 2.8.01) and quash the same.

For petitioners : Mr.S.Elamurugan

For respondent : Mr.E.Sampath Kumar,
Govt. Advocate.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

(Order of the Court was delivered by P.K.MISRA, J.)

Heard the learned counsel for both parties.

2. The petitioners in this writ petition have joined the services in Class IV of Tamil Nadu Basic Services as Night Watchman/Masalchi in office of the first respondent. They have been selected as their names have been sponsored by the employment exchange. Though the petitioners have not passed Class VIII, in course of time, they were promoted as Office Assistants on transfer in the year 1988 so far as petitioners 1 to 4 are concerned and in the year 1990 so far as petitioners 5 and 6 are concerned.

3. It is, of course, true at that stage, the instruction contained in G.O.Ms.No.1077, Personnel and Administrative Reforms (Per.F) Department, dated 1.12.1987, was to the effect that the employees belonging to Class IV of Tamil Nadu Basic Service, having the educational qualification of passing the III Form or VIII Standard and completed probation in Class IV or served in the said class for not less than one year, shall be eligible for appointment to all categories in Class III on transfer from Class IV.

4. Subsequently, by G.O.Ms.No.374 Personnel and Administrative Reforms (Per.F) Department, dated 22.10.1993, the Special Rules for the Tamil Nadu Basic Service had been amended with retrospective effect from 1.12.1987, that is to say, the date on which G.O.Ms.No.1077, Personnel and Administrative Reforms (Per.F) Department, dated 1.12.1987 had been issued, incorporating similar conditions for appointment in Class III on transfer from Class IV. Subsequently, in a matter relating to one A.Solamuthu, it was ascertained that he had been so appointed even though he did not possess the minimum educational qualification of passing Class VIII.

5. Inspite of such amendment in the Special Rules, the petitioners continued to hold the post of Office Assistant. In the meantime, in respect of one A. Solamuthu, who was appointed as Office Assistant, even though he did not possess the minimum qualification, proceedings were initiated and he was reverted to the post of Masalchi. While rejecting his appeal, the Registrar, High Court observed that it would be open to the District Judges concerned to take action in respect of others in accordance with law. Thereafter, the present impugned order dated 30.7.2001 was issued by the respondent against the writ petitioners by indicating that they did not possess the minimum qualification and therefore, they cannot continue to function as Office Assistants.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. Learned counsel for the petitioners has raised two contentions. It was first contended that such order has been passed by the respondent without seeking any explanation from the petitioners. It is further submitted that at the time when they were appointed, the statutory rules were not in force even though the executive instruction had been issued and the Rules were changed only in 1993, but with retrospective effect. It is also contended by him that at any rate, there is a power to relax under Rule 48 of the Tamil Nadu State and Subordinate Services Rules and if any proceedings would have been initiated and an opportunity would have been given, the petitioners would have submitted for relaxation, and in view of the nature of service already rendered for more than 10 years, there was every possibility for relaxing such rules.

7. Apart from the above, the learned counsel for the petitioner also placed reliance on the decisions of the Supreme Court in AIR 1991 S.C. 295 (H.C.Puttaswamy v. Hon'ble Chief Justice of Karnataka) and AIR 1991 S.C. 1824 (State of U.P. v. Sant Lal). In AIR 1991 Supreme Court 295 , it was observed as follows :

> "The precedents apart, the circumstances of this case justify an humanitarian approach and indeed, the appellants seem to deserve justice ruled by mercy. We also take note of the fact that the writ petitioners also would be appointed in the High Court as stated by the learned Advocate General of the State."

In AIR 1991 S.C. 1824 (State of U.P. v. Sant Lal), it was observed as follows :

> "Mr. Prithvi Raj, learned counsel appearing for the State contended that it was necessary that we set at rest the legal controversy, namely, whether in view of the order of the Governor issued on April 30, 1969, it is the District Magistrate who would be the authority to terminate the services of the concerned employees though they were appointed earlier by the Joint Director, Medical Services. Since the respondent has put in a long service of 28 years and more, we feel that even if the point is decided in favour of the State Government, it would be too late to permit the Government to terminate his services. No useful purpose will, therefore, be served in going into the exercise of deciding the point. Besides, an occasion to decide the said point may not arise even in future. We, therefore, refrain from expressing any opinion on the point and direct the State Government to continue the respondent in service. We have no doubt that taking into consideration the long service of the respondent and also taking into

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

consideration the fact, that even when his services were sought to be terminated in February 1976, he had put in no less than 14 years of service, though according to the State Government, in a temporary capacity, the State Government would now take steps to regularise his services and given him all the benefits including that of promotion to which he is entitled."

8. In the peculiar facts and circumstances of the case, we are inclined to accept the submissions made by the counsel for the petitioners. It is apparent that the impugned order was passed by the respondent without following the principles of natural justice. If notice of proceedings would have been issued to the petitioner, it would have been possible for the petitioners to pray for relaxation of the rules.

9. It is apparent to note that the petitioners have been continuing in service as Office Assistants for at least more than 15-16 years. The nature of job does not require a high degree of qualification or skill. Moreover, the petitioners have acquired valuable experience and there is no complaint regarding their service efficiency at any point of time.

10. In such view of the matter, in our opinion, the decisions of the Supreme Court in A.I.R. 1991 S.C. 295 (H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka) and A.I.R. 1991 S.C. 1824 (State of U.P. v. Sant Lal) will come to the aid of the petitioners' in the present case. Accordingly the writ petition is allowed. No costs. Consequently, WPMP No.21864 of 2001 is closed.

gs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The I Additional District-cum-
Chief Judicial Magistrate,
Tirunelveli.

+ 1 cc to Mr.S. Elamurugan, Advocate SR No.18210/06
+ 1 cc to the Government Pleader SR No.18071/06

RSN(CO)
SR/22.5.2006 W P No.14737 of 2001

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/